

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**HARRY E. ALDERSHOF**

## Claimant

VS.

## HANCOCK EXCAVATING

Respondent

AND

# WEST AMERICAN INSURANCE COMPANY

Insurance Carrier

## ORDER

Claimant appealed the October 6, 2000 Award entered by Administrative Law Judge John D. Clark. The Board heard oral argument in Wichita, Kansas, on February 9, 2001.

## APPEARANCES

Russell B. Cranmer of Wichita, Kansas, appeared for claimant. Douglas D. Johnson of Wichita, Kansas, appeared for respondent and its insurance carrier.

## RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

## ISSUES

Claimant alleges that on October 21, 1997, he was attacked and struck by his boss, Frank Hancock, and sustained permanent injuries. In the October 6, 2000 Award, Judge Clark denied claimant's request for benefits. The Judge found that claimant was not credible and that claimant failed to prove that he sustained any work-related injuries.

Claimant contends Judge Clark erred. Claimant argues that he now has headaches and left hand numbness that were caused by the alleged attack. Therefore, claimant requests the Board to reverse the Award and grant him benefits.

Conversely, respondent and its insurance carrier contend the Award denying benefits should be affirmed. They argue that claimant is not credible and that he failed to prove that he sustained either a compensable accident or injuries. They argue that claimant intentionally provoked Mr. Hancock.

The issues before the Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. If so, what is the nature and extent of claimant's injuries and disability?
3. Is claimant entitled to receive temporary total disability benefits?
4. Is claimant entitled to receive any medical benefits?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Board finds and concludes:

1. The Board affirms the Judge's finding that claimant failed to prove that he sustained any work-related injuries in the alleged October 21, 1997 confrontation with his boss, Frank Hancock.

Claimant contends that Mr. Hancock struck him, causing a gash on his forehead and a bloody lip. But Frank Hancock, Richard Hancock, and Edward Gasaway all testified that neither Frank Hancock nor claimant struck the other. Moreover, when claimant saw Dr. Kimberly Snapp on October 24, 1997, the doctor did not note any cuts or abrasions on claimant's face. Additionally, neither the investigation report prepared by the Sedgwick County Sheriff's Department, who was called to the scene immediately after the incident, nor claimant's written statement that he provided to the sheriff's deputy immediately after the incident contains any mention of claimant having a bloody lip or gash on his forehead.

2. The Board also affirms the Judge's finding that claimant lacks credibility. In addition to the divergent descriptions of the incident between claimant and the others, the Board also notes that claimant's written statement to the sheriff's deputy states that he was struck twice – once in the mouth and once in the forehead. That statement is contrary to the history claimant provided Dr. Snapp that he was struck multiple times in the face and once in the left hand. And that statement is also contrary to the history that claimant provided to Dr. Greg Ricke that he was beaten about the head and shoulders for about 15 minutes.

3. The Workers Compensation Act places the burden of proof on injured workers to establish their right to compensation.<sup>1</sup> And that burden is to persuade the trier of facts by a preponderance of the credible evidence that their position on an issue is more probably true than not when considering the whole record.<sup>2</sup>

4. The Board concludes that claimant failed to prove that he was either struck or that he sustained any injury in the alleged October 21, 1997 incident. That finding and conclusion renders the other issues moot. Moreover, the request for benefits should be denied.

5. The Board adopts the Judge's findings and conclusions that are not inconsistent with the above and that are supported by the record.

**AWARD**

**WHEREFORE**, the Board affirms the October 6, 2000 Award.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS  
Douglas D. Johnson, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> K.S.A. 44-501(a).

<sup>2</sup> K.S.A. 44-508(g).